IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

Om Prakash & Another Vs. State of Rajasthan
(D.B. Criminal Appeal No.13/2002)

D. B. Criminal Appeal under Sec.374 (2) Cr.P.C. against the judgment dated 13-12-2001 in Sessions Case No.128/2001 passed by Shri Bhagwan Das, RHJS, Additional Sessions Judge (Fast Track) No.2, Kota.

Date of Judgment: July 25, 2007.

PRESENT
HON'BLE MR. JUSTICE SHIV KUMAR SHARMA
HON'BLE MR. JUSTICE GUMAN SINGH

Mr. Biri Singh Sinsinwar] for appellants.
Mr. Kamlendra Sihag ]

Mr. M.L.Goyal, Public Prosecutor for the State.

BY THE COURT: (PER HON'BLE Shiv Kumar Sharma,J.)

Challenge in this appeal is to the judgment dated December 13, 2001 of the learned Additional Sessions Judge No.2 (Fast Track) Kota, whereby the appellants, two in number, were convicted and sentenced as under:-

Om Prakash:
U/s.302 IPC:
To suffer imprisonment for life and fine of Rs.500/-, in default to further suffer six months simple imprisonment
U/s.323 IPC:
No separate sentence was awarded.
Mukut Bihari:
U/s.302/34 IPC:
To suffer imprisonment for life and fine of Rs.500/-, in default to further suffer six months simple imprisonment
U/s.323 IPC:
No separate sentence was awarded.

2. As per prosecution story it was Ram Ratan (since deceased) and his brother Biram went to Police Station Ayana on July 24, 2001 at 10.05 AM and handed over a written report (Ex.P-1) to Purshottam Head Constable who was Incharge of the Police Station at the relevant time. In the report it was stated that while he was grazing cows, Mukut caught hold of him and Om Prakash inflicted blow with Kuntia on his head and pushed him into Canal. The incident had been witnessed by Mukut s/o Kaidar and Chandra Prakash. After regaining consciousness he came to lodge the report. On that report a case under sections 307, 341 and 34 IPC was registered and investigation commenced. In the course of investigation Ram Ratan succumbed to the injuries and Section 302 IPC was added. Autopsy on the dead body got performed, necessary memos were drawn, statements of witnesses were recorded, appellants were arrested and on completion of investigation charge sheet was filed. In due course the case came up for trial before the learned Additional Sessions Judge (Fast Track) No.2, Kota. Charges under sections 323, 302 and 302/34 IPC were framed against the appellants, who denied the charge and claimed trial. The prosecution in support of its case examined as may as 17 witnesses. In the explanation under Sec.313 CrPC, the appellants claimed innocence. No witness in support of their defence was however examined. Learned trial Judge on hearing final submissions convicted and sentenced the appellants as indicated above.

3. Learned counsel for the appellants and learned Public Prosecutor advanced their respective submissions and took us through the material on record.

4. Injuries sustained by Ram Ratan were examined on July 24, 2001 at 10.50 AM by Dr. Sita Ram Verma (Pw.7), who drew Injury Report (Ex.P-7). In the injury report it was stated that injured was unconscious. Following injuries were found on the person of Ram Ratan:-

> 1. Lacerated wound 7 x 2½ x bone deep on parieto occipital region of left side scalp
> 2. Bruise with swelling 4 x 3cm on the occipital region near mastoid process left side of scalp.

Dr.Sita Ram Verma (Pw.7) in his cross examination admitted that both the injuries could be caused by one blow:-

> "मेरी राय में जब चोट नं01 आई होगी तभी चोट नं02 भी आई होगी"

5. Dr. P.K.Tiwari (Pw.17), who conducted autopsy on the dead body opined in the Post Mortem Report (Ex.P-19) that the cause of death was coma as a result of head injury.

6. Chandra Prakash (Pw.3) and Mukut Bihari (Pw.8), who were named as eye witnesses of the occurrence in FIR did not support the prosecution case and were declared hostile.

7. Purshottam Sharma Head Constable (Pw.1), to whom the written report was handed over, deposed in the cross examination that Ram Ratan came to the police station around 9.45 AM and remained in the police station for 15 minutes. Purshottam Sharma admitted that although brother of Ram Ratan came along with him but after leaving Ram Ratan he went back. One another person, who also came with Ram Ratan, was the scribe of the report.

8. On a close scrutiny of the evidence adduced at the trial we find it consistent qua appellant Om Prakash only. So far as allegations against appellant Mukut Bihari are concerned the prosecution has failed to establish the participation of Mukut Bihari in the assault on the deceased. Since no eye witness supported the prosecution story and FIR was drawn in the suspicious circumstances, possibility of over implication of appellant Mukut Bihari cannot be ruled out and we find ourselves unable to fasten vicarious criminal liability on appellant Mukut Bihari.

9. As already noticed that two injuries sustained by the deceased could be caused by one blow attributed to Om Prakash, who did not act in a cruel or unusual manner. The incident occurred all of sudden and on a spur of moment, then it can be presumed that Om Prakash had knowledge that the single blow inflicted by him was likely to cause death of Ram Ratan, even though he had no intention of causing death or such bodily injury as is likely to cause death. In these circumstances Exception 4 to Section 300 IPC is attracted and Om Prakash is found guilty for the offence punishable under Part II of Section 304 IPC.

10. For these reasons, we dispose of instant appeal in the following terms:-

> (i) We partly allow the appeal of appellant Om Prakash and instead of section 302 we convict him under section 304 part II IPC. Looking to the fact that the appellant has already undergone confinement for a period of more than 5 years and 11 months, the ends of justice would be met in sentencing him to the period

already undergone by him in confinement. We however acquit him of the charge under section 323 IPC. The appellant Om Prakash, who is in jail, shall be set at liberty forthwith, if not required to be detained in any other case.

(ii) We allow the appeal of appellant Mukut Bihari and acquit him of the charges under sections 302/34 and 323 IPC. The appellant Mukut Bihari is on bail, he need not surrender and his bail bonds stand discharged.

(iii) The impugned judgment of learned trial court stands modified as indicated above.

(Guman Singh),J. (Shiv Kumar Sharma)J.

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